# July 2006

# Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Third Edition)

## Part A—Commentary

### 2.5 Description of Property to be Seized

Insert the following text after the last paragraph on page 10:

In *People v Martin*, ___ Mich App ___, ___ (2006), the Court of Appeals cited *People v Zuccarini*, 172 Mich App 11 (1988), discussed above, in support of its ruling that warrants obtained to search several structures for evidence of prostitution and drug trafficking described with sufficient particularity the items to be seized. According to the *Martin* Court:

> "[T]he descriptions of the items to be seized from these three locations was sufficiently particularized. The search warrants authorized the search for equipment or written documentation used in the reproduction or storage of the activities and day-to-day operations of the bar. This sentence is further qualified by the reference to the drug trafficking and prostitution activities that were thought to take place there. See *Zuccarini*, *supra* at 16 (noting that a reference to the illegal activities may constitute a sufficient limitation on the discretion of the searching officers). Thus, examining the description in a commonsense and realistic manner, it is clear that the officers' discretion was limited to searching for the identified classes of items that were connected to drug trafficking and prostitution activities at Legg's Lounge. *Id.* Hence, the search warrant provided reasonable guidance to the officers performing the search. [*People v* ]*Fetterley*, [229 Mich App 511], 543 [(1998)]. Therefore, the search warrants met the particularity requirement." *Martin, supra* at ___.

# Part A—Commentary

## 2.12 Executing the Search Warrant

Insert the following text after the block quote in the middle of page 25:

When law enforcement officers violate the knock-and-announce rule before executing a search warrant, application of the exclusionary rule is not the proper remedy. *Hudson v Michigan*, 547 US ___, ___ (2006).

In *Hudson*, police officers arrived at the defendant's home with a search warrant authorizing them to search for drugs and firearms. Outside the entrance to the defendant's home, the officers announced their presence and waited three to five seconds before entering the house through the unlocked front door. Officers found and seized both drugs and firearms from the home. The Michigan Court of Appeals, relying on Michigan Supreme Court precedent, ruled that application of the exclusionary rule is not the proper remedy when evidence is seized pursuant to a warrant but in violation of the knock-and-announce rule. *Hudson, supra* at ___.

The *Hudson* Court restated the three interests protected by the common-law knock-and-announce rule. First, compliance with the knock-and-announce rule protects the safety of the resident and the law enforcement officer because it minimizes the number of situations when "an unannounced entry may provoke violence in supposed self-defense by the surprised resident." Secondly, when law enforcement officers delay entry by knocking and announcing their presence, a resident is given the opportunity to cooperate with the officers "and to avoid the destruction of property occasioned by a forcible entry." Finally, when officers avoid a sudden entry into a resident's home, it protects a resident's dignity and privacy by affording the resident an opportunity "to collect oneself before answering the door." The Court found none of those interests present in this case:

> "What the knock-and-announce rule has never protected, however, is one's interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests that *were* violated in this case have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable." *Hudson, supra* at ___ (emphasis in original).

The Court further supported its conclusion by referencing three of its own prior opinions. In *Segura v United States*, 468 US 796 (1984), the Court distinguished the effects of "an entry as illegal as can be" from the effects of the subsequent legal search and excluded only the evidence obtained as a result of the unlawful conduct. In *Segura*, the evidence at issue resulted from a legal search warrant based on information obtained while police officers occupied an apartment they had illegally entered. Because the warrant was not derived from the officers' initial entry, the Court did not exclude the evidence

 

seized under the warrant. As applied to the *Hudson* case, the Court noted that a different outcome in this case could not logically follow the disposition of *Segura.* According to the Court:

> "If the search in *Segura* could be 'wholly unrelated to the prior entry,' when the only entry was warrantless, it would be bizarre to treat more harshly the actions in this case, where the only entry was *with* a warrant. If the probable cause backing a warrant that was issued *later in time* could be an 'independent source' for a search that proceeded after the officers illegally entered and waited, a search warrant obtained *before* going in must have at least this much effect." *Hudson, supra* at ___ (footnote and citations omitted, emphasis in original).

In *New York v Harris*, 495 US 14 (1990), the Court refused to exclude a defendant's incriminating statement when, although the defendant's statement resulted from his warrantless arrest and subsequent custodial interrogation, it "was not the fruit of the fact that the arrest was made in the house rather than someplace else." As for the *Harris* case's import on this case, the *Hudson* Court noted:

> "While acquisition of the gun and drugs [from Hudson's home] was the product of a search pursuant to warrant, it was not the fruit of the fact that the entry was not preceded by knock and announce." *Hudson, supra* at ___ (footnote omitted.)

In *United States v Ramirez*, 523 US 65 (1998), the Court explained that whether the exclusionary rule applied in a specific case turned on whether there was a "sufficient causal relationship" between the Fourth Amendment violation and the evidence discovered during the course of events surrounding the violation. Said the *Hudson* Court with regard to the *Ramirez* case: "What clearer expression could there be of the proposition that an impermissible manner of entry does not necessarily trigger the exclusionary rule?" *Hudson, supra* at ___.

# Part A—Commentary

## 2.14 Other Exceptions Applicable to Search Warrants

### E. Exigent Circumstances Doctrine

Insert the following text after the June 2006 update to page 33:

A police officer's warrantless entry into a defendant's home may be justified under the exigent circumstances doctrine when the officer is responding to a home security alarm, and the officer's decision to enter the premises is reasonable under the totality of the circumstances. *United States v Brown*, ___ F3d ___, ___ (CA 6, 2006). In *Brown*, a police officer responded to a security alarm at the defendant's home and found the exterior basement door partly open. Thinking that the open door could mean that a burglary was in progress and concerned for his safety and that of others, the officer entered the basement to look for intruders. As he conducted a protective sweep of the basement, the officer noticed another door in the basement. To determine whether an intruder was hiding in the basement room, the officer approached the interior basement door. It, too, was slightly open. The officer testified that he noticed an odor of marijuana as he got closer to the door and "quickly pushed the door open in an attempt to catch anyone inside off guard." Using his flashlight in the dark room, the officer saw no one in the room. However, the officer did see that the room contained several marijuana plants and grow lights. Based on what the officer observed in the basement room, a search warrant was obtained and the contraband was seized. *Id*. at ___.

Because each decision the officer made to further investigate whether a burglary was in progress or an intruder was present in the basement was reasonable under the circumstances, the Court ruled that the officer's warrantless entry was lawful and that the officer's movements once inside the basement did not impermissibly exceed the scope of his lawful entry. *Brown, supra* at ___. The Court further held that, subject to its other requirements, the plain view doctrine authorized the seizure of any contraband the officer saw after he entered the basement. *Id*. at ___. Specifically, the Court noted the following:

> "In this case, [the officer] responded to a burglar alarm that he knew had been triggered twice in a relatively short period of time and arrived within just a few minutes of the first activation. He was not met by a resident of the house, but by [a] neighbor who directed him to the basement door. The sounding alarm, the lack of response from the house, and the absence of a car in the driveway made it less likely that this was an accidental activation. Investigating, [the officer] found the front door secured but the basement door in the back standing ajar. While [the officer] did not find a broken window or pry marks on the open door, it was objectively reasonable for him to believe that this was not a false

 

alarm but, rather, that the system had recently been triggered by unauthorized entry through the open basement door. These circumstances, including the recently activated basement door alarm and evidence of a possible home invasion through that same door, establish probable cause to believe a burglary was in progress and justified the warrantless entry into the basement." *Id*. at ___.

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## 2.14 Other Exceptions Applicable to Search Warrants

### H. Status of the Person Searched

Immediately before Section 2.15 on page 35, add a new subsection (H) as indicated above and insert the following text:

A suspicionless search or seizure conducted solely on the basis of an individual's status as a probationer or parolee does not violate the Fourth Amendment's protection against unreasonable searches and seizures. *Samson v California*, 547 US ___, ___ (2006). The *Samson* case involved a California statute* authorizing law enforcement officers to search a parolee—without a warrant and without suspicion of criminal conduct—solely on the basis of the person's status as a parolee.

*Michigan law authorizes a police officer to arrest without a warrant any probationer or parolee if the officer has reasonable cause to believe the person has violated a condition of probation or parole. MCL 764.15(1)(h).

The question to be decided by the *Samson* Court was "[w]hether a condition of [a parolee's] release can so diminish or eliminate a released prisoner's reasonable expectation of privacy that a suspicionless search by a law enforcement officer would not offend the Fourth Amendment." *Samson*, *supra* at ___ (footnote omitted). The Court concluded that under the totality of the circumstances and in light of the legitimate government interests furthered by monitoring parolee activity, the suspicionless search of a parolee does not impermissibly intrude on the parolee's already diminished expectation of privacy. *Id*. at ___.